

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

In re:	:	
	:	
Schiller, Knapp, Lefkowitz, & Hertz, LLP	:	Chapter 7
	:	Case No. 23-10558
Debtor.	:	
	:	

**STATEMENT OF ISSUES TO BE PRESENTED AND DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL OF M&T BANK**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, M&T Bank (the “**Bank**”), a secured creditor of debtor, Schiller, Knapp, Lefkowitz, & Hertz, LLP (“**Debtor**”), submits its *Statement of Issues to be Presented and Designation of Items to be Included in the Record on Appeal* of the Court’s *Order Granting Trustee Proposed Abandonment Pursuant to 11 U.S.C. § 554* entered on July 10, 2023 [Dkt. No. 67].

I. Statement of Issues to Be Presented on Appeal

1. Did the Court err by granting the request of Debtor’s chapter 7 trustee (the “**Trustee**”) to abandon Debtor’s cash and accounts receivables pursuant to 11 U.S.C. § 554 where (i) Debtor’s bankruptcy schedules did not list the cash held by Debtor on hand or in its bank accounts and did not list Debtor’s accounts receivables and (ii) no evidence was submitted under oath identifying the cash, bank account funds, or accounts receivables to be abandoned by the Trustee?

2. Did the Court err in its determination that the Trustee satisfied his burden of proof under 11 U.S.C. § 554 with respect to the abandonment of Debtor’s cash and accounts receivables?

3. Did the Court err by denying the Bank's request to have Debtor's cash and accounts receivable abandoned directly to the Bank where (i) the Bank held a first lien priority security interest in such cash and accounts receivable, (ii) the Bankruptcy Code and the applicable loan documents prohibited Debtor's use of such cash and accounts receivable, and (iii) the applicable loan documents granted the Bank an immediate right to possession of such cash and accounts receivable?

II. Designation of Record on Appeal

<u>Docket No.</u>	<u>Date</u>	<u>Pleading</u>
1	5/31/2023	Chapter 11 Subchapter V, Voluntary Petition for Non-Individuals.
3	5/31/2023	Declaration re: of Gary Lefkowitz in Support of First Day Relief and Petition
5	5/31/2023	Emergency Motion to Conditional Use of Cash Collateral
24	6/5/2023	Objection to Emergency Motion to Conditional Use of Cash Collateral
25	6/5/2023	PDF with attached Audio File. Court Date & Time [06/05/2023 10:01:22 AM]
29	6/7/2023	Sua Sponte Order Converting Case to Chapter 7
30	6/7/2023	PDF with attached Audio File. Court Date & Time [06/07/2023 01:32:51 PM]
31	6/7/2023	PDF with attached Audio File. Court Date & Time [06/07/2023 04:02:44 PM].
34	6/8/2023	Order Denying Use of Cash Collateral
35	6/8/2023	Notice of Appointment of Trustee Christian H. Dribusch, Esq.
37	6/13/2023	Motion to Abandon re: Various Debtor Property
44	6/27/2023	Limited Objection to Motion to Abandon
46	6/28/2023	Letter Re: Requesting Scheduling on M&T Bank's Limited Objection to the Trustee Notice of Proposed

<u>Docket No.</u>	<u>Date</u>	<u>Pleading</u>
		Abandonment be Held
47	6/28/2023	Reply to Motion to Abandon re: Various Debtor Property.) Declaration of Gary Lefkowitz in Support of Trustee's Motion to Abandon
50	6/28/2023	PDF with attached Audio File. Court Date & Time [06/28/2023 04:01:36 PM]
51	6/29/2023	Affidavit Re: Response Filed by Alstate Process Service Inc.
52	6/29/2023	PDF with attached Audio File. Court Date & Time [06/29/2023 01:50:03 PM]
53	6/30/2023	Certificate of Service of Limited Objection to Motion to Abandon re: Various Debtor Property
57	7/5/2023	Supplemental Objection to Motion to Abandon re: Various Debtor Property
58	7/5/2023	Supplemental Response to Motion to Abandon re: Various Debtor Property in support of Trustee's Motion
59	7/5/2023	Supplemental Response to Motion to Abandon re: Various Debtor Property
60	7/5/2023	Response to Motion to Abandon re: Various Debtor Property
63	7/6/2023	PDF with attached Audio File. Court Date & Time [07/06/2023 02:01:07 PM]
67	7/10/2023	Order Granting Trustee Proposed Abandonment Pursuant To 11 U.S.C. §554 effective as of 5:00 p.m. Eastern Standard Time on July 14, 2023
70	7/12/2023	Transcript regarding Hearing Held 7/6/2023
71	7/12/2023	Notice of Filing of Transcript and of Deadlines Related to the Restriction and Redaction
77	7/21/2023	Transcript regarding Hearing Held 6/7/2023
78	7/21/2023	Notice of Filing of Transcript and of Deadlines Related to the Restriction and Redaction
79	7/24/2023	Notice of Appeal District Court
80	7/24/2023	Appeal Cover Letter re: Filing of Notice of Appeal
81	7/24/2023	Court Certificate of Mailing

<u>Docket No.</u>	<u>Date</u>	<u>Pleading</u>
82	7/24/2023	Transmission Cover Sheet of Notice of Appeal to District Court
84	7/28/2023	Transcript Ordered Re: Appeal Filed by U.S. Trustee
86	7/31/2023	Transcript Ordered Re: Appeal Filed by M&T Bank
88	8/3/2023	Transcript regarding Hearing Held 06/28/2023
89	8/3/2023	Notice of Filing of Transcript and of Deadlines Related to the Restriction and Redaction
90	8/4/2023	Transcript regarding Hearing Held 06/29/2023 RE: Motion to Abandon
91	8/4/2023	Notice of Filing of Transcript and of Deadlines Related to the Restriction and Redaction
92	8/7/2023	Transcript Ordered Re: Appeal Filed by M&T Bank

Date: August 7, 2023
New York, New York

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CERTIFICATE OF SERVICE

I certify that on August 7, 2023, a true copy of the foregoing was served via ECF and/or will be served via regular mail on the following parties, who are the Appellees to the Bank's appeal:

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Chapter 7 Trustee

Dated: August 4, 2023

/s/ Phillip S. Pavlick
Phillip S. Pavlick